

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HENDRICKS )

IN THE HENDRICKS SUPERIOR COURT

CAUSE NO. 32-D03-0710-PL-42

STATE OF INDIANA, )

Plaintiff, )

v. )

DAILY BREW BUILDING SALES, LLC, )

Doing business as )

BEAR CREEK COFFEE Company, )

Defendant. )

FILED  
CLERK OF HENDRICKS COUNTY  
2007 DEC -3 30 AM 9:22  
Lindsay Spence

**AMENDED COMPLAINT FOR INJUNCTION,  
CIVIL PENALTIES, COSTS, AND RESTITUTION**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Lisa Ward, petitions the Court, pursuant to the Indiana Business Opportunity Transactions Act, Ind. Code § 24-5-8-1 *et seq.*, and the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-1 *et seq.*, for consumer restitution, injunctive relief, civil penalties, costs, and other relief.

**PARTIES**

1. Plaintiff, State of Indiana, has the authority to prosecute this Complaint pursuant to Ind. Code §§ 24-5-8-20 and 24-5-0.5-4(c).

2. Defendant, Daily Brew Building Sales, LLC ("Daily Brew") is a duly registered domestic limited liability company with a principal place of business located at 8372 East U. S. Highway 36, Avon, Indiana 46123.

**FACTS**

3. Defendant Daily Brew, doing business as Bear Creek Coffee Company ("Bear Creek"), solicits and sells business opportunities through its website,

www.bearcreekcoffee.com, whereby investors receive all equipment and training necessary for opening and operating a coffee shop or kiosk. Out of state investors have the option of licensing the name Bear Creek.

4. Defendant's web site solicits investors in Indiana and elsewhere.

5. Defendant failed to file with the consumer protection division of the Office of the Attorney General a copy of the disclosure statement required by Ind. Code § 24-5-8-2 and a copy of the bond required by Ind. Code § 24-5-8-3, and to pay the initial filing fee of Fifty Dollars (\$50.00) prior to advertising or making any other representations to any investor in Indiana, as required by Ind. Code § 24-5-8-4.

**A. Allegations Regarding William Schaugg**

6. On or about January 7, 2006, William Schaugg of Rochester Hills, Michigan contracted with Defendant to purchase a drive-through coffee shop business, which was to include a kiosk to be manufactured by Defendant and licensing of the name Bear Creek Coffee, for a total price of Ninety-Two Thousand Five Hundred Dollars (\$92,500.00). A copy of this contract is attached hereto and incorporated by reference as "Exhibit A."

7. On or about October 8, 2005, Schaugg had paid to Defendant an initial cash payment of Twenty Thousand Dollars (\$20,000.00).

8. Defendant's contract with Schaugg failed to include the following information, as required by Ind. Code § 24-5-8-6:

- a. the name and business address of Defendant's agent in Indiana authorized to receive service of process;

b. a detailed description of any training that Defendant undertakes to provide to the investor; and

c. a statement of the investor's thirty (30) day right to cancel the contract.

9. Defendant did not provide Schaugg with a copy of a disclosure document containing the information required by Ind. Code § 24-5-8-2.

10. Defendant did not obtain a surety bond in favor of the State of Indiana for the use and benefit of investors, as required by Ind. Code § 24-5-8-3, prior to its transaction with Schaugg.

11. After plans to place the business at two (2) proposed locations failed, and citing lack of funding as well as inadequate business support from Defendant, Schaugg informed Defendant, in January 2007, that he wished to halt the process and receive a refund of his Twenty Thousand Dollar (\$20,000.00) payment.

12. Defendant replied to Schaugg's request by stating that Defendant would not issue a refund check for that amount because Defendant did not keep that amount of money on hand.

13. The letter of intent signed by Defendant and Schaugg on October 8, 2005 represented that, "The deposit is 100% refundable immediately anytime after the visit on 6/25 if the purchasers decide not to purchase the specialty coffee drive-thru business." A copy of the letter of intent is attached hereto and incorporated by reference as "Exhibit B."

14. To date, Schaugg has received no refund from Defendant.

**B. Allegations Regarding Dr. Richard Marz**

15. On or about November 6, 2005, Dr. Richard Marz of Statesboro, Georgia contracted with Defendant for equipment and training needed to open and operate a coffee shop. Defendant was also to provide design services for the shop, which was to be located in a building chosen by Marz.

16. Marz paid to Defendant an initial cash payment of Sixteen Thousand Two Hundred Fifty Dollars (\$16,250.00) towards the total business opportunity cost of Thirty-Two Thousand Five Hundred Dollars (\$32,500.00) on or about November 23, 2005. Defendant represented in its letter of intent that the payment was refundable "until we start the manufacturing process."

17. Defendant's contract with Marz failed to include the following required information, as required by Ind. Code § 24-5-8-6:

- a. the name and business address of Defendant's agent in Indiana authorized to receive service of process;
- b. a detailed description of any training that Defendant undertakes to provide to the investor; and
- c. a statement of the investor's thirty (30) day right to cancel the contract.

18. Defendant did not provide Marz with a copy of a disclosure document containing the information required by Ind. Code § 24-5-8-2.

19. Defendant did not obtain a surety bond in favor of the State of Indiana for the use and benefit of investors, as required by Ind. Code § 24-5-8-3, prior to its transaction with Marz.

20. On or around January 24, 2006, Marz notified defendant that the financing had fallen through for the building where his coffee shop was to be located. Marz attempted to seek out another investor so that he could move forward with the planned coffee shop, but was unable to do so.

21. To the best of Plaintiff's knowledge and belief, the manufacturing process had not yet commenced as of that date.

22. On or around February 9, 2006, Marz and Defendant began discussing how much of a refund was owed to Marz. An amount of Twelve Thousand Seven Hundred Fifty Dollars (\$12,750.00) was ultimately established as the amount to be refunded to Marz.

23. Marz made repeated requests for his refund. Eventually, Defendant represented that it would issue the refund in two (2) installments of Six Thousand Three Hundred Seventy-Five Dollars (\$6,375.00) each, to be paid on June 19 and June 26, 2006.

24. Marz did not receive any of his refund until on or around January 3, 2007, when he received a check from Defendant for Six Thousand Two Hundred Fifty Dollars (\$6,250.00).

25. To date, Marz has not received the remaining Six Thousand Five Hundred Dollars (\$6,500.00) owed to him by Defendant.

**C. Allegations Regarding Gaylyn Woodruff**

26. On or about March 11, 2006, Gaylyn Woodruff of Melbourne, Florida contracted with Defendant to purchase a drive-through coffee shop business, which was to include a kiosk to be manufactured by Defendant and licensing of the name Bear

Creek Coffee, for a total price of Ninety-Two Thousand Five Hundred Dollars (\$92,500.00). At this time, Woodruff paid to Defendant an initial cash payment of Twenty Thousand Dollars (\$20,000.00).

27. In handwritten additions to the Licensing Agreement and the Asset Purchase Agreement (attached hereto and incorporated by reference as "Exhibit C" and "Exhibit D," respectively), Defendant represented that the contracts were contingent on the licensee's (Woodruff's) satisfaction with the shop's location and the lease. The additions, which were each initialed by both parties, further stated that if Woodruff was not satisfied, her payment was refundable in full, less deductions for any real estate fees.

28. Defendant's contract with Woodruff failed to include the following information, as required by Ind. Code § 24-5-8-6:

- a. the name and business address of Defendant's agent in Indiana authorized to receive service of process;
- b. a detailed description of any training that Defendant undertakes to provide to the investor; and
- c. a statement of the investor's thirty (30) day right to cancel the contract.

29. Defendant did not provide Woodruff with a copy of a disclosure document containing the information required by Ind. Code § 24-5-8-2.

30. Defendant did not obtain a surety bond in favor of the State of Indiana for the use and benefit of investors, as required by Ind. Code § 24-5-8-3, prior to its transaction with Woodruff.

31. In April 2006 Woodruff informed Defendant that she would not be able to proceed with the business due to a family illness and asked Defendant to refund her

payment.

32. Woodruff and Defendant exchanged many emails over the following months, with Defendant repeatedly representing to Woodruff that she would receive a full refund.

33. On or around October 11, 2006, Defendant paid Woodruff Five Thousand Dollars (\$5,000.00) of the Twenty Thousand Dollars (\$20,000.00) owed to her. The check was returned for insufficient funds.

34. On or around October 25, 2006, Defendant reissued a check to Woodruff for Five Thousand Dollars (\$5,000.00).

35. On or around May 16, 2007, Defendant and Woodruff agreed to an installment plan for payment of the remainder of her refund. Defendant, by the terms of the payment plan, represented that it would pay Woodruff One Thousand Dollars (\$1,000.00) per month until Woodruff was fully refunded, with an additional Five Thousand Dollars (\$5,000.00) paid on November 16, 2007.

36. Defendant has failed to adhere to the terms of the payment plan it had proposed and, to date, Woodruff has received only Two Thousand Dollars (\$2,000.00) of the remaining Fifteen Thousand Dollars (\$15,000.00) owed to her by Defendant.

**COUNT I – VIOLATIONS OF THE BUSINESS OPPORTUNITY  
TRANSACTIONS ACT**

37. The State of Indiana realleges and incorporates by reference the allegations contained in paragraphs 1 through 36 above.

38. The transactions described in Paragraphs 6, 15, and 26 are sales of “business opportunities” as defined by Ind. Code §24-5-8-1.

39. Defendant’s failure to file with the Consumer Protection Division of the

Office of the Attorney General a copy of the disclosure statement and surety bond and pay the initial filing fee of fifty Dollars (\$50.00) prior to placing any advertisement or making any representation to any Indiana investor about its business opportunity, as referenced in paragraph 5 above, violates Ind. Code § 24-5-8-4.

40. Defendant's failure to provide investors, including but not limited to Schaugg, Marz, and Woodruff, with the disclosures required by Indiana law at least seventy-two (72) hours before the earlier of the investors' execution of a business opportunity contract with the Defendant or receipt of any consideration by the Defendant, as referred to paragraphs 9, 18, and 29 above, violates Ind. Code § 24-5-8-2.

41. Defendant's failure to obtain a surety bond in favor of the State of Indiana, as referred to in paragraphs 10, 19, and 30 above, violates of Ind. Code § 24-5-8-3.

42. Defendant's failure to include in its contracts the information referenced in paragraphs 8, 17, and 28 above violates Ind. Code § 24-5-8-6(b).

43. Defendant's act of requiring Schaugg, Marz, and Woodruff to make initial cash payments exceeding twenty percent (20%) of the initial payments, as referred to in paragraphs 7, 16, and 26 above, violates Ind. Code § 24-5-8-11 in that those payments exceeded twenty percent (20%) of the initial payment and, to the best of Plaintiff's knowledge and belief, the funds in excess of the twenty percent (20%) amount were not placed in an escrow account in accordance with Ind. Code § 24-5-8-12.

44. Due to the foregoing violations of Ind. Code § 24-5-8-2, investors, including Schaugg, Marz, and Woodruff, have a statutory right to cancel their business opportunity contracts with Defendant in accordance with Ind. Code § 24-5-8-15.



45. Due to the foregoing violations of Ind. Code § 24-5-8-6, as well as Defendant's misleading statements regarding refunds, as referred to in paragraphs 13, 16, and 27 above, investors, including Schaugg, Marz, and Woodruff, who notified Defendant within one (1) year of their contract dates that they wished to void their contracts and receive refunds of all consideration paid to Defendant, as referenced in paragraphs 11, 20, and 31 above, have a statutory right to void their business opportunity contracts with Defendant in accordance with Ind. Code § 24-5-8-16.

**COUNT II – VIOLATIONS OF THE INDIANA DECEPTIVE  
CONSUMER SALES ACT**

46. The State of Indiana realleges and incorporates by reference the allegations contained in paragraphs 1 through 45 above.

47. In accordance with Ind. Code § 24-5-8-20, Defendant's violations of Indiana's Business Opportunity Transactions Act, Ind. Code 24-5-8-1 *et seq.* are also violations of Indiana's Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-1 *et seq.*

**COUNT III– KNOWING AND INTENTIONAL VIOLATIONS OF THE  
DECEPTIVE CONSUMER SALES ACT**

48. The State of Indiana realleges and incorporates by reference the allegations contained in paragraphs 1 through 46 above.

49. Defendant committed the deceptive acts set forth above with knowledge and intent to deceive.

**RELIEF**

WHEREFORE, Plaintiff, State of Indiana, requests the Court to enter a judgment against Defendant and order the following relief:

- a. A permanent injunction pursuant to Ind. Code § 24-5-8-18 and Ind.

Code § 24-5-0.5-4(c)(1), enjoining Defendant, its agents, representatives, employees, successors, and assigns from engaging in conduct in violation of Ind. Code § 24-5-8-1 *et seq.*, or Ind. Code § 24-5-0.5-1 *et seq.*;

b. Avoidance or, in the alternative, cancellation of Defendant's business opportunity contracts with investors, including but not limited to Schaugg, Marz, and Woodruff, pursuant to Ind. Code § 24-5-8-15, 16 and Ind. Code § 24-5-0.5-4(d);

c. Consumer restitution, pursuant to Ind. Code § 24-5-0.5-4(c)(2) and (d), payable to the Office of the Attorney General for the benefit of consumers as follows:

- i. William Schaugg, in the amount of Twenty Thousand Dollars (\$20,000.00);
- ii. Dr. Richard Marz, in the amount of Six Thousand Five Hundred Dollars (\$6,500.00); and
- iii. Gaylyn Woodruff, in the amount of Thirteen Thousand Dollars (\$13,000.00);

d. Costs pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;

e. On Count III of Plaintiff's Complaint, civil penalties, pursuant to Ind. Code § 24-5-0.5-4(g), in the amount of Five Thousand Dollars (\$5,000.00) per knowing violation of the Indiana Deceptive Consumer Sales Act, payable to the State of Indiana;

- f. On Count III of Plaintiff's Complaint, civil penalties, pursuant to Ind. Code § 24-5-0.5-8, in the amount of Five Hundred Dollars (\$500.00) per intentional violation of the Indiana Deceptive Consumer Sales Act, payable to the State of Indiana; and
- g. All other just and proper relief.

Respectfully submitted,

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